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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 GUADALUPE OLVERA FAMILY TRUST,)

11 Plaintiff(s),)

12 v.)

13 JARED E. SHAFER, et al.,)

14 Defendant(s).)
15

Case No. 2:14-cv-01298-GMN-NJK

REPORT AND RECOMMENDATION

(Docket No. 208)

16 A party moving the Court for relief has a basic burden of showing that relief is properly granted.
17 *See, e.g., Silvagni v. Wal-Mart Stores, Inc.*, 320 F.R.D. 237, 244 (D. Nev. 2017). To that end, a motion
18 must provide factual points and legal authorities showing a basis for the relief sought. *See, e.g., Local*
19 *Rule 7-2(d)*. On October 9, 2017, Plaintiff filed an 18-line motion seeking a default judgment against
20 Defendant Patience Bristol for \$462,221.25. Docket No. 205; *see also* Docket No. 206 (affidavit). That
21 motion was clearly defective, failing to address several of the fundamental showings required by
22 controlling law. *See* Docket No. 207. As a courtesy to Plaintiff, the Court nonetheless denied the
23 motion without prejudice and outlined some of the basic showings required to obtain default judgment.
24 *See id.* at 1-2. Among those basic required showings, the Court noted that entry of default alone does
25 not entitle a plaintiff to default judgment and, instead, district courts determine whether to exercise their
26 discretion to enter default judgment by analyzing the seven discretionary factors identified by the Ninth
27 Circuit. *See id.* at 1 (citing *Eitel v. McCool*, 782 F.2d 1470,1471-72 (9th Cir. 1986)). The Court
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1 cautioned counsel to “carefully review the required showings for entry of default judgment and address
2 all relevant issues in any renewed motion.” *See id.* at 2; *see also id.* at 2 n.2.

3 Now pending before the Court is Plaintiff’s renewed motion seeking a default judgment against
4 Defendant Patience Bristol for \$61,770. Docket No. 208. The renewed motion continues to suffer from
5 a fundamental flaw; despite the Court expressly identifying the need to analyze the seven discretionary
6 factors identified by the Ninth Circuit and citing for Plaintiff the controlling Ninth Circuit case, the
7 renewed motion fails to identify those factors or explain how they support an exercise of discretion to
8 grant default judgment. *See id.* As the Ninth Circuit has explained, the “starting point is the general rule
9 that default judgments are ordinarily disfavored. Cases should be decided upon their merits whenever
10 reasonably possible.” *Eitel*, 782 F.2d at 1472. Because Plaintiff’s renewed motion has failed to
11 establish or even address the *Eitel* factors, Plaintiff has failed to overcome the presumption that cases
12 should be decided on the merits and the renewed motion for default judgment should be denied. *See*
13 *Messner v. Global Realty Development Corp.*, 2010 WL 11519422, at *2 (C.D. Cal. Jan. 28, 2010); *see*
14 *also Point Center Fin’l, Inc. v. HPC U.S. Fund 1, L.P.*, 2012 WL 12953463, at *2 (C.D. Cal. Dec. 12,
15 2012); *Kantor v. Monument Homes Realty & Invs., LLC*, 2009 WL 113844, at *1 (D. Ariz. Jan. 16,
16 2009).¹

17 Accordingly, the undersigned **RECOMMENDS** that the motion for default judgment against
18 Defendant Patience Bristol be **DENIED**.

19 IT IS SO ORDERED.

20 DATED: October 18, 2017

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NANCY J. KOPPE
United States Magistrate Judge

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28 ¹ The Court would ordinarily deny the motion without prejudice so that the factors can be addressed,
but the Court has done that already and providing a further opportunity is not warranted here.

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